

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3157 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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G S R T C

Versus

BHIKHABHAI MANJIBHAI

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Appearance:

MR MD PANDYA for Petitioner

SERVED for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 14/08/96

ORAL JUDGEMENT

Being aggrieved by the award made by Labour Court, Rajkot in Ref (LCR) No. 594 of 1981 (at Annexure 'A' to the petition) confirming the findings recorded by the Corporation that the Workman is guilty of the charges levelled against him but directing the Corporation to re-employ within one month from the publication of the award and to consider the appointment that may be made as a fresh appointment without giving any right of continuity of service or backwages, the Corporation has

preferred this application.

2. Succinctly stated, the facts leading to the present petition, as it emerges from the memo of petition and the award of the Labour Court, are as under :-

2.1 The opponent at the relevant time was discharging his duties as a Conductor in a stage carriage bus of Gujarat State Road Transport Corporation which was plying on its route Mangrol-Bantva. The checking squad of the Corporation checked the bus at Khirasara at about 4.45 p.m. It was found that eventhough the opponent recovered bus fare from 5 passengers of two groups travelling from Nagichana to Khirasara, no tickets were issued to them. It was also found that one passenger was allowed to travel without a ticket from Chandavana to Bantva. The checking party thereupon got issued tickets to those five passengers from whom the opponent recovered fare without issuing tickets. The checking sward recovered fare from one passenger who was allowed by the opponent to travel without a ticket. Way Bill and unpunched tickets were taken in the custody by the checking party; Statement of passengers were recorded in the presence of the opponent on which the opponent has put his signature. The statement of the respondent was also taken wherein he admitted that he has recovered busfare in advance from the five passengers travelling from Nagichana to Khirasara but has further stated that after giving him the busfare, these passengers went ahead and so he forgot to issue tickets to them. He has also admitted that he has not issued a ticket to one passenger travelling from Chandavana to Bantva and has failed to recover the busfare from him. Out of the five passengers from whom the opponent recovered the busfare, one Kasturben Kalabhai has stated that she was accompanied in the bus by other two ladies and that they were travelling from Nagichana to Khirasara forming a group of three passengers. It was further stated that she had given the bus fare to the opponent from the very beginning of the journey but till the point where the bus was checked, the opponent had not issued tickets to them. The remaining two passengers, Parvatiben Hurambhai and Gangaben Harjibhai have stated that they were travelling from Nagichana to Khirasana and though they paid the bus fare, till Khirasara, no tickets were issued to them. One passenger Mandumal Dhanji who was travelling without paying the fare, stated that he was travelling from Nagichana to Bantva and he had not paid the busfare and that ticket was not issued to him by the opponent.

2.2 Proceedings were initiated against the opponent

and it was found that the opponent was guilty of misconduct falling within clauses 7.A, 12.A and 12.B of the Discipline and Appeal Procedure Rules framed by the Corporation pursuant to the Gujarat State Transport Employees Service Regulation. Charge sheet was issued to him to which the opponent filed his reply. Oral inquiry was conducted on 15.2.1978. Considering the evidence on record, the Competent Authority found the opponent guilty of the charges levelled against him in the charge sheet. Thereupon, a show cause notice was issued by the Competent Authority on 21.2.1978 and ultimately the Competent Authority passed an order on 20.3.1978 terminating the services of the opponent.

2.3 Against the order of termination, the opponent preferred an appeal before the First Appellate Authority and after hearing the opponent, by an order dated 7.4.1978, the appellate authority dismissed the appeal preferred by the opponent. Against the order passed by the First Appellate Authority, the opponent preferred an appeal before the Second Appellate Authority and considering the evidence on record and the submissions made by the opponent, the Second Appellate Authority also passed an order on 4.7.1979 dismissing the appeal preferred by the appellant. Thereafter the opponent raised a dispute under the Industrial Disputes Act, 1947 and by order dated 16.5.1981, the Assistant Commissioner of Labour, Rajkot referred the dispute to the Labour Court Rajkot for adjudication. The Labour Court passed an award on 6.3.1982 confirming the finding that the workman is guilty of the charges levelled against him but instead of punishment of dismissal, invoking section 11.A of the Industrial Disputes Act, directed that the opponent workman to be re-employed by giving a fresh appointment without continuity of services or backwages. Being aggrieved by this order, the Corporation has preferred this petition.

3. Mr. Pandya, learned advocate for the Corporation submitted that the learned Presiding Officer of the Labour Court considered the default card of the opponent workman which clearly shows that in the past also, on several occasions, the opponent workman was held guilty of various misconducts. He further submitted that in the year 1975, the opponent was dismissed from service for misconduct and the instances of past record as shown in the default card do not warrant any lesser punishment. In his submission, once the workman is found guilty, then appropriate punishment must be inflicted. In the instant case, the opponent was discharging duties as a bus conductor. He was required to take fare from the

passengers, and issue tickets. However, eventhough he has recovered the money, he has not issued tickets. He has also permitted one passenger to travel without paying the fare. If such a person is permitted to continue in service, the Corporation, which is a Public Body, would suffer losses. The loss in the instant case may or may not be voluminous, but the effect of continuing such persons in the service of the Corporation would have an effect on the functioning of the Corporation. The opponent has betrayed the trust posed in him by the Corporation. The Conductor of a bus is supposed to collect the correct fare from the passengers and to issue proper tickets. Mr. Pandya further submitted that in the instant case, the past conduct was pointed out to the Labour Court by producing the default card, which indicates several misdeeds. The Labour Court has concluded that the opponent is guilty of the charges levelled against him. Once such a conclusion is arrived at by the Labour Court upholding the findings of the appropriate authority, the Labour Court ought not to have issued directions to re-employ the opponent in services.

4. Mr. Pandya submitted that the Labour Court cannot direct the Corporation to re-employ a workman who has robbed the National Exchequer. If a bus conductor has been dismissed in such circumstances, his reinstatement would enable him to indulge in the same malpractice in future. It is true that a bus conductor has to collect fare and issue tickets everyday and reinstatement would therefore involve grave risk because of the repetitive opportunity that he would get to indulge in the malpractice and the daily temptation that he would face. It is established that the workman, a bus conductor, collected the fare from passengers but had not issued tickets though he had sufficient opportunity to do so. In the circumstances, this shows that there was a dishonest intention.

5. Mr. Pandya, learned advocate was questioned that in a case like this, is the punishment not excessive and the workman could not be accommodated where he will have no opportunity to deal with money? Learned advocate pointed out that only with a view to give an opportunity to improve and to behave with honesty, opportunity was given to the opponent, not once but on more than one occasion.

6. According to learned advocate Mr. Pandya, there was sufficient material before the Labour Court which indicated that there were several cases of misconduct, even to the extent that once the opponent was dismissed

from service. Thus, according to Mr. Pandya, chance for improvement and to behave with honesty has already been given to the opponent but instead of improving and behaving with honesty, the opponent has continued his misconduct. Mr. Pandya submitted that the Corporation is plying a large fleet of buses on various routes and it is not possible for the checking squad to check each and every route every day. It is only when some surprise checks are done that such misconduct is brought to light and once a workman is found guilty, he should be visited with punishment of dismissal especially when there is repetition of the misconduct; hence the question of invoking section 11.A of the Act does not arise.

7. Misappropriation by a bus conductor must be viewed with a degree of seriousness especially having regard to the fact that it would make successful working of a public Corporation impossible. Misappropriation by a bus conductor is detected and he is found guilty, punishment must be deterrent to him and also to others, for misappropriation in such circumstance as that would be in relation to public monies and the burden would fall on the shoulders of the common man. In the case of G.S.R.T.CORPN. vs. JAMNADAD BECHARBHAI reported in 1983 LAB I.C. 1349, a bus conductor employed by the same Corporation was found misappropriating the amount of public exchequer in the same fashion. The Court observed:

"And be it realised that 80 per cent of the total tax burden consists of indirect taxes which makes it impossible for the common man to stand erect and virtually makes him crouch on the ground. There is another tormenting reason for viewing the matter with anxious eyes. The Public Sector can never (NEVER) succeed if 'everyone's' property (which it in fact is) is treated as 'no one's' property. The New Culture for the New Man of New India must therefore be National Interest above all other interests including self-interest, sectional interest or class-interest. And therefore the bus conductor, poor as he is, may have to suffer."

The Court further held:

"Under the circumstances, the Labour Court was not justified in reinstating a conductor who had collected fare, pocketed the same, and robbed the National Exchequer, in the same post where he could re-indulge in the same weakness at public

cost. The Labour Court can, depending upon facts and circumstances of the case and of the offender direct that he should be absorbed in the workshop section or some other similar posts which does not involve daily handling of money."

In that case, this Court quashed the order and remanded the matter to the Labour Court. The Court also observed that the Labour Court, depending upon the facts and circumstances, can direct the Corporation to absorb him in any other department which does not involve daily handling of money.

8. Mr. Pandya, learned Advocate in this connection submitted that in the instant case, the respondent was found to have been indulging in similar acts in the past and even after recording a finding of guilt, opportunity was given to him. He submitted that in the Country there are large number of honest citizens who continue to remain unemployed and if repeated opportunities are given to the persons who are dishonest, honest persons waiting in the queue for a job will not get a chance. He further submitted that knowing full well that a person is dishonest, the Corporation cannot take the risk of employing him in any other Department.

9. In the instant case, there was misappropriation by a bus conductor who has collected fare from passengers but has failed to issue tickets to them, and this situation is undisputed. The Court has pointed out that the Labour Court would have to think more than twice before directing reinstatement in the same post as Conductor wherein he would be afforded the same opportunity or faced with the same temptation and the Corporation would be exposed to the same risk every day.

10. In the instant case, the Labour Court has accepted the case of the Corporation and the workman is held guilty but by exercising powers under section 11.A of the Act, directed the Corporation to re-employ the workman without considering the fact that in the past, the workman was found guilty in other cases and though opportunity was given to improve, he has again indulged in the same activity. In the circumstances, the order passed by the Labour Court cannot sustain.

11. Considering the entirety of the case, I am of the view that the Labour Court was not right in invoking section 11.A of the Act by directing the Corporation to re-employ the workman. The order passed by the Labour Court at Annexure 'A' is therefore, quashed and set

aside.

Rule made absolute accordingly. No order as to costs.

csm./